Supreme Court, U.S.
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No. 01-11006

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM VALUCK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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10 pp

QUESTION PRESENTED

Whether the evidence is sufficient to support petitioner's conviction for money laundering under 18 U.S.C. 1956(a)(1)(A)(i).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A10) is reported at 286 F.3d 221.

JURISDICTION

The judgment of the court of appeals was entered on March 14, 2002. The petition for a writ of certiorari was filed on June 12, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Texas, petitioner was convicted of wire fraud, in violation of 18 U.S.C. 1343; interstate transportation of property obtained by fraud, in violation of 18 U.S.C. 2314; and

money laundering, in violation of 18 U.S.C. 1956(a)(1)(A)(i). He was sentenced to 70 months' imprisonment, to be followed by a three-year period of supervised release, and was ordered to pay $634,000 in restitution. The court of appeals affirmed. Pet. App. A1-A10.

1. Petitioner, a physician, operated a small ambulance company in Huntsville, Texas, with Mike Cleveland. When the ambulance company went out of business, Cleveland started a new business, Life Guard Services, and opened a checking account for the company at Citizens Bank in Huntsville. Cleveland was the only signatory on the account because petitioner feared that his previous tax problems would cause the IRS to place a tax lien on the account. Pet. App. A3; Gov't C.A. Br. 4.

After establishing the account, petitioner and Cleveland began soliciting individuals to invest in prime bank debenture programs, falsely assuring potential investors that petitioner had previously made successful investments in such programs. Susan Snow and Richard Bratt agreed to invest in the bank debenture program and, pursuant to their agreement with petitioner, Snow and Bratt transferred by wire $100,000 to Cleveland's Life Guard Services account. Before the transfer, that account had a balance of $200. Because petitioner was not a signatory on the account and did not have direct access to the funds, he instructed Cleveland to purchase $25,000 in cashier's checks with money from the account. Petitioner deposited three cashier's checks totaling $17,500 in a bank account belonging to his girlfriend, Sylvia Hargroder; he

deposited a $5,000 check in a joint account held by petitioner and Hargroder; and he cashed a $2,500 check at Citizens Bank. After petitioner told Hargroder that the cashier's checks represented profits from his investments, Hargroder introduced petitioner to her mother, who invested $30,000 with petitioner. For the next several months, petitioner continued to solicit and obtain funds from other investors. Pet. App. A4; Gov't C.A. Br. 5-10.

2. A federal grand jury returned an indictment charging petitioner with two counts of wire fraud (Counts 1 and 2), two counts of interstate transportation of property obtained by fraud (Counts 3 and 4), and one count of money laundering (Count 5). Pet. App. C1-C5. Count 2 of the indictment alleged that, for the purpose of executing his fraudulent investment scheme, petitioner sent a computer facsimile requesting that $100,000 in Bratt's and Snow's investment account be transferred to Cleveland's Citizens Bank Account. Count 5 alleged that petitioner,

> knowing that the money or funds involved in a financial transaction represented the proceeds of some form of unlawful activity, that being the wire fraud described in Count 2 of this indictment * * * , did knowingly conduct a financial transaction, with the intent to promote the carrying on of such specified unlawful activity, said financial transaction being the purchase and negotiation of $25,000 of cashier's checks from Citizens Bank of Texas, in violation of Title 18, United States Code, Section 1956(a)(1)(A)[(i)].

Pet. App. C5.

At trial, petitioner moved for a judgment of acquittal at the close of the government's case and renewed the motion at the close of all the evidence. The district court granted the motion on

Count 1, but denied it on the other counts. The jury found petitioner guilty on the four remaining counts of the indictment. Pet. App. A4-A5.

3. The court of appeals affirmed. Pet. App. A1-A10. The court rejected petitioner's contention that upholding his money laundering conviction "would essentially turn the money laundering statute into a 'money spending' statute." Id. at A6. The court explained that "the manner in which [petitioner] spent the ill-gotten money is irrelevant because it is the deposit of the funds, not the subsequent expenditure of such funds, which is the transaction intended to promote the predecessor wire fraud." Ibid.

The court of appeals also rejected petitioner's contention that his negotiation of the cashier's checks did not "promote" the underlying wire fraud. Pet. App. A6-A8. The court explained that because petitioner "intentionally chose not to include his own name as a signatory on the Cleveland account so as to avoid the watchful eye of the IRS, * * * the only way [petitioner] could prosper from [his] scheme was to receive the cashier's checks and then either deposit or cash the check." Id. at A8. Petitioner's negotiation of the cashier's checks therefore "promoted the antecedent wire fraud" by enabling him to profit from the fraud while "avoid[ing] detection by the IRS." Ibid.

ARGUMENT

Petitioner contends (Pet. 16-19) that the Court should grant certiorari to resolve a conflict in the circuits on the question whether an intent to promote the carrying on of unlawful activity

under 18 U.S.C. 1956(a)(1)(A)(i) can be based on a defendant's spending of the proceeds of unlawful activity. That question, however, is not presented here.[1]

As the court of appeals explained (Pet. App. A6-A7), petitioner's money laundering conviction was not based on evidence that he spent money derived from his wire fraud scheme. Rather, the indictment charged petitioner with money laundering based on his "negotiation of $25,000 of cashier's checks," Pet. App. A6 n.2, and "the manner in which [petitioner] spent the ill-gotten money is irrelevant because it is the deposit of funds, not the subsequent expenditure of such funds, which is the transaction intended to promote the predecessor wire fraud." Id. at A6.[2]

Nor is there any other basis for granting review in this case. Although there is some disagreement among courts of appeals on whether a transaction can violate Section 1956(a)(1)(A)(i) by promoting the carrying on of an already completed crime, see Pet.

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[1] The government has sought certiorari on the question whether "proceeds" in Section 1956(a)(1)(A)(i) means "profits." United States v. Scialabba, No. 02-442. Because petitioner does not dispute that his transaction involved the proceeds of unlawful activity, see Pet. App. A5, there is no reason to hold the petition here pending the disposition in Scialabba.

[2] Because petitioner's conviction is not based on his expenditure of funds, petitioner's reliance (Pet. 17) on United States v. McGahee, 257 F.3d 520 (6th Cir. 2001), is misplaced. The defendant in that case had been convicted of money laundering based on evidence that he used proceeds of an embezzlement scheme to make payments on his home mortgage, his car loan, and a personal loan. The court of appeals reversed, holding that "[p]aying for personal goods, alone, is not sufficient to establish that funds were used to promote an illegal activity." Id. at 526-527.

App. A7 n.5, the facts of the cases on which petitioner relies are distinguishable from the facts here. Three of the cases cited by petitioner (Pet. 17) hold that a defendant's receipt or deposit of criminal proceeds, standing alone, is not sufficient to establish money laundering under Section 1956(a)(1)(A)(i). United States v. Jolivet, 224 F.3d 902, 909-911 (8th Cir. 2000) (evidence of defendant's "singular act of depositing settlement checks" that represented proceeds of completed insurance fraud schemes was insufficient to sustain money laundering conviction); United States v. Calderon, 169 F.3d 718, 721-722 (11th Cir. 1999) (reversing money laundering conviction where there was no evidence that single deposit of drug proceeds furthered underlying drug trafficking activity); United States v. Heaps, 39 F.3d 479, 485-486 (4th Cir. 1994) (defendant's receipt of payment for completed drug transaction did not constitute money laundering, where there was no evidence of further transactions and "the only evidence as to what was done with the money after it was sent was that it was put in a box in a drawer of the defendant's house"). But as the court of appeals explained, petitioner's conviction does not rest solely on evidence that he received or deposited the proceeds of completed criminal activity. Instead, the evidence shows that petitioner arranged to have the proceeds of his fraud wired into an account that did not bear his signature. By subsequently depositing and cashing checks drawn on that account, petitioner was able to profit from the fraud while "avoid[ing] the watchful eye of the IRS." Pet. App. A8.

Petitioner's transactions also promoted the carrying on of additional fraudulent activity. Petitioner's depositing of the checks into Hargroder's account promoted the continuance of his fraudulent scheme because petitioner told Hargroder that the checks represented profits from his investments, and Hargroder subsequently recommended petitioner as an investment advisor to her mother, who invested $30,000 in petitioner's scheme. Gov't C.A. Br. 7, 16. Thus, petitioner's financial transactions promoted "not only his prior unlawful activity, but also his ongoing and future unlawful activity." United States v. Haun, 90 F.3d 1096, 1100 (6th Cir. 1996), cert. denied, 519 U.S. 1059 (1997). For that reason as well, the decisions in Jolivet, Calderon, and Heaps are inapposite here.[3]

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[3] Petitioner's reliance (Pet. 17) on United States v. Anderson, 189 F.3d 1201 (10th Cir. 1999), and United States v. Garcia-Emanuel, 14 F.3d 1469 (10th Cir. 1994), is also misplaced. Those cases interpret 18 U.S.C. 1956(a)(1)(B)(i), a section of the money laundering statute that is not at issue in the present case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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